

SENATE BILL NO. 37

INTRODUCED BY M. MACDONALD

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO RECORDING OF PAROLE BOARD HEARINGS; REVISING WHEN THE BOARD MAY USE AN AUDIO RECORDING ~~OR WRITTEN RECORD~~ INSTEAD OF A VIDEO RECORDING; REVISING WHEN AND HOW A MEMBER OF THE PUBLIC MAY OBTAIN A RECORDING; AMENDING SECTION 46-23-110, MCA; REPEALING SECTION 2, CHAPTER 402, LAWS OF 2015; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-23-110, MCA, is amended to read:

"46-23-110. (Temporary) Records -- dissemination. (1) (a) The department and the board shall keep a record of the board's acts and decisions. Citizens may inspect and make copies of the public records of the board, as provided in 2-6-1003, 2-6-1006, 2-6-1007, and this section.

(b) (i) ~~The~~ Except as provided in subsection SUBSECTIONS (1)(b)(ii) AND (1)(B)(III), the board shall video-record and audio-record all hearings conducted under part 2 or part 3 of this chapter or 46-23-1025. A recording may not personally identify the victim without the victim's written consent.

~~(ii) If the technological means to video-record is not available or in circumstances involving equipment malfunction, an audio recording or, in the board's discretion, a stenographic record commissioned by the board will suffice for all purposes.~~ IF AN INMATE WHO IS SCHEDULED FOR A PAROLE HEARING IS SERVING A MONTANA SENTENCE IN AN OUT-OF-STATE CORRECTIONAL FACILITY AND THE BOARD'S VIDEO RECORDING SYSTEM IS INCOMPATIBLE WITH THE OUT-OF-STATE FACILITY'S SYSTEM, MAKING IT IMPOSSIBLE TO VIDEO-RECORD THE INMATE, THE BOARD SHALL NEVERTHELESS CREATE A DUAL AUDIO-VIDEO RECORDING OF THE PAROLE HEARING IN WHICH THE BOARD PANEL CAN BE SEEN AND HEARD AND THE SUBJECT INMATE CAN HEAR THE PANEL AND BE HEARD BY THE PANEL.

(iii) IF DUE TO EQUIPMENT FAILURE A VIDEO RECORDING OF A SCHEDULED PAROLE HEARING CANNOT BE MADE, THE BOARD PANEL SHALL GIVE THE INMATE AN OPTION TO STIPULATE TO AN AUDIO-ONLY RECORDING OF THE HEARING IN LIEU OF POSTPONING THE HEARING UNTIL A LATER DATE AFTER THE VIDEO RECORDING EQUIPMENT FAILURE IS RECTIFIED. THE STIPULATION AND THE HEARING MUST BE AUDIO-RECORDED IN THAT CIRCUMSTANCE.

1 (c) Except as provided in subsection (2), the board shall make video recordings publicly available. A
 2 recording is publicly available if it is available for review at the board's offices during normal business days and
 3 hours and upon reasonable advance notice.

4 (d) A member of the public may obtain a duplicate of a recording if the duplicate can be made using
 5 technology and equipment in use by the board at the time the request is made. The board may charge the actual
 6 costs of duplicating the recording including the staff time required to produce a duplicate.

7 (e) A recording or transcript may not personally identify the victim without the victim's written consent.

8 (2) Records and materials that are constitutionally protected from disclosure are not subject to disclosure
 9 under the provisions of subsection (1). Information that is constitutionally protected from disclosure is information
 10 in which there is an individual privacy or safety interest that clearly exceeds the merits of public disclosure.

11 (3) Upon a request to inspect or copy records of the board's acts and decisions, the board or a board
 12 staff member shall review the record requested and determine whether any document in the file or any content
 13 in a video recording is subject to a personal privacy or safety interest that clearly exceeds the merits of public
 14 disclosure.

15 (4) The board may assert the privacy or safety interest and may withhold a document or redact content
 16 of a video recording if the board determines that the demand for individual privacy clearly exceeds the merits of
 17 public disclosure or if the document's or recording's contents would compromise the safety, order, or security of
 18 a facility or the safety of facility personnel, a member of the public, or an inmate of the facility if disclosed.

19 (5) The board may not withhold from public scrutiny under subsections (2) through (4) any more
 20 information than is required to protect an individual privacy interest or a safety interest.

21 (6) The board may charge a reasonable fee for copying and inspecting records.

22 (7) The board may limit the time and place that the records may be inspected or copied. (~~Terminates~~
 23 ~~June 30, 2019--sec. 2, Ch. 402, L. 2015.~~)

24 **46-23-110. (Effective July 1, 2019) Records -- dissemination.** (1) ~~The department and the board shall~~
 25 ~~keep a record of the board's acts and decisions. Citizens may inspect and make copies of the public records of~~
 26 ~~the board, as provided in 2-6-1003, 2-6-1006, 2-6-1007, and this section.~~

27 ~~———(2) Records and materials that are constitutionally protected from disclosure are not subject to disclosure~~
 28 ~~under the provisions of subsection (1). Information that is constitutionally protected from disclosure is information~~
 29 ~~in which there is an individual privacy or safety interest that clearly exceeds the merits of public disclosure.~~

30 ~~———(3) Upon a request to inspect or copy records of the board's acts and decisions, the board or a board~~

1 ~~staff member shall review the file requested and determine whether any document in the file is subject to a~~
2 ~~personal privacy or safety interest that clearly exceeds the merits of public disclosure.~~

3 ~~———— (4) The board may assert the privacy or safety interest and may withhold a document if the board~~
4 ~~determines that the demand for individual privacy clearly exceeds the merits of public disclosure or if the~~
5 ~~document's contents would compromise the safety, order, or security of a facility or the safety of facility personnel,~~
6 ~~a member of the public, or an inmate of the facility if disclosed.~~

7 ~~———— (5) The board may not withhold from public scrutiny under subsections (2) through (4) any more~~
8 ~~information than is required to protect an individual privacy interest or a safety interest.~~

9 ~~———— (6) The board may charge a reasonable fee for copying and inspecting records.~~

10 ~~———— (7) The board may limit the time and place that the records may be inspected or copied."~~

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12 NEW SECTION. **Section 2. Repealer.** Section 2, Chapter 402, Laws of 2015, is repealed.

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14 NEW SECTION. **Section 3. Effective date.** [This act] is effective July 1, 2019.

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